

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANICE D. MCCOY,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of the Social Security
Administration,

Defendant.

No. C 04-04607 CW

ORDER GRANTING IN
PART PLAINTIFF'S
MOTION FOR
ATTORNEY'S FEES

Plaintiff's counsel moves for attorney's fees pursuant to the Equal Access to Justice Act (EAJA). Defendant Jo Anne Barnhart, in her capacity as Commissioner of the Social Security Administration, opposes this motion, arguing that the amount of fees requested is unreasonable and excessive. The matter was submitted on the papers. Having considered all of the papers filed by the parties, the Court grants in part the motion for attorney's fees.

BACKGROUND

Plaintiff Janice McCoy brought this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's final decision

1 that she was not disabled. On October 27, 2005, the Court issued
2 an order granting Plaintiff's motion for remand and denying
3 Defendant's motion for summary judgment; the Clerk entered
4 judgment.

5 Plaintiff's counsel now requests \$6,307.40 in attorney's fees.
6 In his opening brief, Plaintiff's counsel requested \$4,995.74 in
7 attorney's fees for the 32.1 hours he expended on this case.¹ He
8 noted that, because of his eighteen years of experience with Social
9 Security cases, he spent less time than the average attorney would
10 have needed to spend. In his reply, he amended the original
11 request to include the 8.4 hours he spent preparing the reply.
12 Plaintiff's counsel has now expended 40.5 hours on this case,
13 including the fee litigation. He contends that his request and the
14 number of hours he spent on this case are reasonable under the
15 EAJA. Defendant argues that they are not.

16 DISCUSSION

17 The EAJA provides,

18 Except as otherwise specifically provided by statute, a
19 court shall award to a prevailing party other than the
20 United States fees and other expenses, in addition to any
21 costs awarded pursuant to subsection (a), incurred by
22 that party in any civil action (other than cases sounding
23 in tort), including proceedings for judicial review of
24 agency action, brought by or against the United States in
25 any court having jurisdiction of that action, unless the
26 court finds that the position of the United States was
27 substantially justified or that special circumstances
28 make an award unjust.

28 28 U.S.C. § 2412(d)(1)(A). A party claiming fees has the burden of

26 ¹The Court notes that, although Plaintiff's counsel states
27 that he spent 32.1 hours and requests attorney's fees for 32.1
28 hours, the attached document indicates that he spent 32.7 hours on
this case.

1 documenting the reasonable hours expended and should exclude from a
2 fee request hours that are excessive, redundant, or otherwise
3 unnecessary. Hensley v. Eckerhart, 461 U.S. 424, 433-37 (1983).
4 The party must exercise "billing judgment" with respect to hours
5 included in this fee calculation. Id. at 437.

6 Defendant does not dispute that Plaintiff is a prevailing
7 party; nor does Defendant argue that the government's position in
8 this case was substantially justified. Only the reasonableness of
9 the time Plaintiff's counsel spent on this case is disputed.

10 Defendant argues that the number of attorney hours counsel claims
11 to have expended is unreasonable and the hours should be reduced.

12 1. Plaintiff's Complaint

13 Plaintiff's counsel claims to have spent one hour preparing
14 the complaint: his entry states "write compl, etc." Defendant
15 contends this amount is excessive and unreasonable because the
16 complaint filed was a form complaint. Defendant argues that, based
17 on counsel's eighteen years of experience, this time should be
18 reduced to 0.3 hours.

19 Counsel acknowledges that it was a form complaint. He notes,
20 however, that the one hour also included opening the paper file and
21 data documentation, re-checking deadlines, writing specifics into
22 the complaint, formatting, editing, proofreading, printing,
23 signing, completing a civil cover sheet and making sure that the
24 package was ready to go to court. He states that he has never
25 completed the complaint and other initiating documents in eighteen
26 minutes or less. Nonetheless, counsel states that he wishes not to
27 take the Court's time on this very minor matter and would concede

1 the issue and would not object if the Court reduced the amount by
2 0.7 hours, as Defendant contends is reasonable.

3 Regardless of counsel's willingness to concede, the Court
4 finds that one hour is a reasonable amount of time to prepare and
5 file the complaint and other initiating documents.

6 2. Legal Briefs

7 Plaintiff's counsel claims to have spent approximately 20
8 hours preparing legal briefs and arguments: 13.1 hours on the
9 opening brief; 6.3 hours on the reply brief; and 0.7 hours on
10 drafting proposed orders, e-filing and e-mailing documents.
11 Defendant contends that, because the issues in this case were
12 routine and non-complex, the amount of hours should be reduced to
13 ten hours. But as one court has noted, "Social security cases are
14 fact-intensive and require a careful application of the law to the
15 testimony and documentary evidence, which must be reviewed and
16 discussed in considerable detail." Patterson v. Apfel, 99 F. Supp.
17 1212, 1213 (C.D. Cal. 2000). Here, Plaintiff's counsel was not
18 counsel at the administrative hearing below. And thus, even though
19 the issues presented in this case were not complex, counsel needed
20 to spend time learning the facts of this case.

21 Defendant cites Nugent v. Massanari, 2002 WL 356656 (N.D. Cal.
22 Feb. 28, 2002), in support of her argument that courts have reduced
23 EAJA fees in Social Security cases handled by experienced counsel
24 that involved legal issues that were neither unique or complex. In
25 Nugent, the court found that spending 28.8 hours researching and
26 writing the legal brief was excessive given the attorney's twenty-
27 one years of specialized expertise and familiarity with similar

1 social security disability cases. But the court did not reduce the
2 hours to eight hours, as requested by the defendant. Instead, the
3 court determined that twenty hours was a reasonable time for the
4 work involved.

5 This Court also finds that twenty hours of time is reasonable
6 for the work involved and will not reduce the amount as Defendant
7 requests.

8 3. Communications with Previous Counsel

9 According to Defendant, Plaintiff's counsel claims to have
10 spent 1.9 hours communicating with Plaintiff's previous attorney.
11 Defendant argues that this time was excessive, redundant or
12 otherwise unnecessary and not compensable under the EAJA.

13 Counsel argues that this time was necessary because the
14 previous attorney represented (and represents) Plaintiff in the
15 administrative proceedings. Counsel contends he needed to consult
16 with his predecessor about the contents of the hearing testimony,
17 developing evidence, the status of the case and the results of the
18 litigation. Further, Defendant's calculation of 1.9 hours, counsel
19 notes, is misleading. For example, on October 13, 2004, counsel
20 did not spend 1.1 hours communicating with Plaintiff's previous
21 attorney. Instead, the entry reads, "cont eval, telt prev atty,
22 telt cx." The October 28, 2005 entry for 0.4 hours reads "rec,
23 evaluate ct decision, tt prev atty, etc." Although counsel argues
24 that this time is reasonable, he again states that if the Court
25 rules in Defendant's favor "in order to save attending to such an
26 inconsequential issue," he would not object.

27 The Court finds that the time spent communicating with
28

1 Plaintiff's previous attorney, who is still her attorney for
2 administrative proceedings, was reasonable.

3 4. Fees for Securing Attorney's Fees

4 Plaintiff's counsel claims to have spent 2.0 hours preparing
5 an EAJA proposal letter to Defendant regarding attorney's fees and
6 1.6 hours preparing and filing his motion for attorney's fees.
7 Defendant contends that this is excessive, noting that both the
8 letter and motion contain largely boilerplate language, and that
9 the time should be reduced collectively to 0.5 hours.

10 Plaintiff's counsel contends that not even the quickest of
11 drafters could have finished the letter and motion in 0.5 hours.
12 He notes that in Patterson, the court found that 3.5 hours spent
13 litigating the EAJA motion was reasonable. 99 F. Supp. 2d at 1215.
14 Nonetheless, counsel again states that if it would please the Court
15 to resolve this issue in Defendant's favor, and save the time
16 necessary for a resolution of this issue, he would not object.

17 Again, regardless of counsel's willingness to concede, the
18 Court finds that 3.6 hours is collectively a reasonable amount of
19 time even for experienced counsel to write a proposal letter, draft
20 a boilerplate opening brief and draft a reply. Eight hours and
21 twenty-four minutes, however, is not a reasonable amount of time to
22 spend preparing the reply, especially given counsel's willingness
23 to concede three out of four of Defendant's arguments. The Court
24 will not award counsel the additional \$1,311.66 that he requests
25 for the time spent preparing the reply. Instead, the Court will
26
27
28

1 award \$624.60, which is based on \$156.15² per hour multiplied by
2 four hours, a reasonable amount of time for counsel to have spent
3 preparing the reply.

4 CONCLUSION

5 For the foregoing reasons, the Court GRANTS in part
6 Plaintiff's motion for attorney's fees (Docket No. 27). The Court
7 finds that 36.1 hours was a reasonable amount of time to spend on
8 this case. See, e.g., Patterson, 99 F. Supp. 2d at 1214 (noting
9 that a survey of several dozen social security cases in which
10 attorneys' fees were awarded suggested that the 33.75 hours spent
11 by the plaintiff's counsel fell within the approved range); id. at
12 n.2 (listing social security cases and the amount of time spent by
13 the plaintiff's counsel). The 8.4 hours spent on the reply,
14 however, was not reasonable and counsel will be awarded fees for
15 only four hours of that time. Defendant shall pay Plaintiff's
16 counsel \$5,620.34 in attorney's fees for the 36.1 hours that
17 counsel expended on this case.
18

19 IT IS SO ORDERED.
20

21 Dated: 1/10/06



22
23 CLAUDIA WILKEN
24 United States District Judge
25

26 _____
27 ²The hourly rate for work performed in 2004 is \$152.18, and
28 the hourly rate for work performed in 2005 is \$156.15

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28